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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.564 OF 2015

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Ultratech Cement Limited & Ors.

... Applicants

V/s.

Gulab Kisan Choudhari & Ors.

... Respondents

Ms. Manjiri S. Parasnis for the applicant.

CORAM : AMIT BORKAR, J.**DATED : AUGUST 23, 2023****P.C.:**

1. The applicants are the defendants in regular Civil Suit No.9 of 2015. The plaintiffs prayed for a declaration that order passed by the Collector granting permission to use suit property for non-agricultural purpose by order dated 18th May 2013 be set aside and consequential injunction restraining defendant No.1 and their agents from entering into the suit property.

2. On perusal of the plaint, it appears that defendant No.1 had purchased the suit property. Defendant No.1 applied for use of suit property for non-agricultural purpose. By order dated 18th May 2013, defendant No.4-Collector granted permission to use suit property for non-agricultural purpose, subject to conditions in the said order. The exercise of power by defendant No.4 is under section 44 of the Maharashtra Land Revenue Code, 1966. Based on the said order, it is alleged that defendant No.1 has violated terms

and conditions of the order under section 44 of the Maharashtra Land Revenue Code, 1966. It is further alleged that the measurement of the land was done without consent of the plaintiffs. It is also alleged that defendant No.1 had no ownership right over the property. Despite all these deficiencies, the defendant No.4 granted permission to use suit property for non-agricultural purpose.

3. The defendant Nos.1 to 3 filed an application under Order 7 Rule 11(D) of the Civil Procedure Code, 1908, contending that bar created under section 11 of the Bombay Revenue Jurisdiction Act, 1876, applies to a suit filed without exhausting remedies provided under the act. Remedy of appeal under section 247 of the Land Revenue Code, 1966, was available with the plaintiffs.

4. The trial Court by order dated 1st July 2015, rejected the application based on following reasons:-

- a) Application under section 9(a) of the Civil Procedure Code, 1908, was not filed;
- b) Order 7 Rule 11(D) applies to only those cases where suit is barred by any law;
- c) The plaintiffs have not pointed out bar created under any law; and
- d) Measurement was done fraudulently.

5. The defendants, therefore, filed present revision application. This Court by order dated 22nd September 2015 issued notice for final disposal to the plaintiffs. Order dated 20th October 2015

indicates that respondent No.1 was personally present in the Court and sought time to engage an advocate on behalf of respondent Nos.1 to 6. Record indicates that Mr. Mahesh Shastri, Advocate appeared for respondent Nos.1 to 6. On 14th November 2019, 30th March 2022 and 6th April 2022, the advocate for the respondents was absent. On 21st August 2023, advocate for the respondent was absent and, therefore, this Court passed following Order:

- “1. Despite service, learned advocate for the respondents is absent.
2. As a last chance, stand over to **23rd August 2023**.
3. It is made clear that if advocate for the respondents fails to appear on the next date, the civil revision application will be decided finally on merits.”
6. Today, none appears for the respondents.
7. On perusal of the plaint, it appears that the plaintiffs filed a suit challenging legality and validity of order passed under section 44 of the Maharashtra Land Revenue Code, 1966. The prayer for injunction is a consequential prayer based on invalidity of order under section 44 of the Maharashtra Land Revenue Code, 1966. The relief of injunction is not sought enforcing civil rights over the property. Therefore, the suit needs to be treated as a suit challenging legality and validity of an order passed under section 44 of the Maharashtra Land Revenue Code, 1966. Section 247 of the Maharashtra Land Revenue Code, 1966, provides for appeal against an order passed by the Collector or his subordinate under the provisions of the Maharashtra Land Revenue Code. Therefore, right to use of property for non-agricultural purpose is created

under the Maharashtra Land Revenue Code, 1966, and remedy of appeal is also provided under the Maharashtra Land Revenue Code. It is well settled that if a right is created under the provisions of statute which provides for remedy, jurisdiction of the Civil Court is impliedly barred.

8. However, the application under Order 7 Rule 11(D) requires suit to be barred by express provisions of law. Learned advocate for the applicant invited my attention to section 11 of the Bombay Revenue Jurisdiction Act, 1876, which reads as under:-

“11. Suits not to be entertained unless plaintiff has exhausted right of appeal. — No Civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present.”

9. On reading of section 11 of the Bombay Revenue Jurisdiction Act, 1876, it is clear that in absence of exhausting statutory remedy of appeal, suit challenging legality and validity of order passed by statutory quasi judicial authority is not maintainable. Therefore, in my opinion, the suit is expressly barred by provisions of section 11 of the Bombay Revenue Jurisdiction Act, 1876. Hence, following order:

- a) The impugned order dated 1st July 2015 in regular Civil Suit No.9 of 2015 is quashed and set aside.
- b) The application below Exhibit-36 in regular Civil Suit No.9 of 2015 is allowed.

- c) The regular Civil Suit No.9 of 2015 is dismissed.
- 10. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)